

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

November 27, 2002 Session

KEN RANDALL ALLMON v. WOLF TREE EXPERTS, INC., ET AL.

**Direct Appeal from the Circuit Court for Cannon County
No. 90 Royce Taylor, Judge**

**No. M2002-00366-WC-R3-CV - Mailed - February 6, 2003
Filed - April 25, 2003**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial judge found the plaintiff suffered an injury to both arms which resulted in a permanent partial impairment of 50 percent to both. The defendant says the trial court erred in finding the plaintiff suffered any injury to his right arm and that the award of 50 percent to the left arm is excessive. We modify and affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court
Affirmed as Modified**

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, C.J., and JOE C. LOSER, SP. J., joined.

Patrick A. Ruth, Nashville, Tennessee, for the appellants, Wolf Tree Experts, Inc. and Great American Insurance Company.

D. Russell Thomas, Murfreesboro, Tennessee, for the appellee, Ken Randall Allmon.

MEMORANDUM OPINION

Facts

At the time of trial the plaintiff was forty-five years of age. He had a high school education and a varied and interesting work history which encompasses such things as working on shrimp boats and being a high rise window washer.

The facts surrounding the accident in this case are simple. The plaintiff was in a tree cutting branches with a chain saw on March 21, 2000. When the saw cut through a branch, his left arm, which was holding the saw, dropped and he heard a pop in his left elbow. The plaintiff testified he felt intense pain in this elbow after hearing the pop.

The plaintiff was taken to the emergency room for medical care and was later treated or seen by Vanderbilt medical personnel. The plaintiff never returned to work for the defendant. He was offered a light duty job by the defendant but was of the opinion he could not do the work based upon his restrictions.

Medical Evidence

Dr. Douglas B. Haynes, an orthopedic surgeon, saw the plaintiff on March 21, 2000. The plaintiff reported he had injured his left arm. Dr. Haynes found some tenderness on both of the plaintiff's elbows. He treated the plaintiff for some time and referred him to Dr. Callahan for a determination of whether surgery was warranted.

Dr. Haynes saw the plaintiff for some time and ultimately determined he had a 5 percent impairment to the left arm. He based this on weight lifting restrictions placed by Dr. Callahan. Dr. Haynes found the plaintiff suffered no impairment to the right arm.

Dr. David Gaw, an orthopedic surgeon, filed a C 32 form in which he found the plaintiff had a 5 percent impairment to the left arm and zero impairment to the right arm.

Dr. David Callahan, an orthopedic surgeon, testified the plaintiff had a degenerative condition in his elbow and that the work he did exacerbated the pain.

Gordon Doss, a vocational expert, testified the plaintiff suffered a 50 percent vocational loss as a result of the injury to his arms.

Discussion

We find from the evidence that the plaintiff suffered a definable traumatic injury to his left arm on March 21, 2000. We further find from the testimony of Dr. Gaw and Dr. Haynes that the plaintiff sustained a five percent permanent partial medical impairment to his left arm and no impairment to his right arm.

The evidence shows Dr. Callahan found the plaintiff sustained a one percent impairment to both the left and right arms. He found this was as a result of exacerbation of an underlying degenerative condition of the plaintiff's arm but that the only result was that this caused pain.

All of the physicians found the plaintiff had zero impairment when the AMA Guideline was used.

Based on the evidence in this case we find the evidence preponderates against a finding that the plaintiff sustained a compensable injury to his right arm. We therefore reverse as much of the judgment of the trial court as allows recovery for the right arm. We find the evidence does not preponderate against the finding that the plaintiff suffered a 50 percent loss to his left arm and we affirm that portion of the judgment.

We modify and affirm the judgment as set out above and remand this case to the trial court for entry of such orders as are necessary to carry out this judgment.

The costs of the appeal are taxed equally to the plaintiff and defendant.

JOHN K. BYERS, SENIOR JUDGE

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No. M2002-00366-SC-WCM-CV - Filed - April 25, 2003

JUDGMENT

This case is before the Court upon Ken Randall Allmon's motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the motion for review is not well-taken and should be DENIED; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be assessed to Ken Randall Allmon for which execution may issue if necessary.

PER CURIAM

Drowota, C.J., not participating.